



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 11, 1998

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County Texas
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-0416

Dear Ms Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112771.

The Harris County District Attorney (the "district attorney") received an open records request for records pertaining to the charge of indecency with a child against a named individual. Although the requestor states that she is seeking "any and all" related records, the request is later narrowed to seek "any and all copies of correspondence from teachers and students." This office has confirmed with the requestor that it is only these particular records that are being requested. We therefore will limit our discussion as to whether the responsive records contained in Exhibit B are excepted from required public disclosure.

Exhibit B consists of various letters from students, teacher, and others that were gathered by the criminal defendant's attorney for the purpose of defending against the criminal charges. You contend that the responsive documents contained in Exhibit B are excepted from public disclosure because the district attorney subsequently submitted these records to the Harris County Grand Jury during its deliberations. Open Records Decision No. 513 (1988) concluded, however, that information is not excepted from public disclosure, either as a record of the judiciary, *see* Gov't Code § 552.003(b), or as information deemed confidential under article 20.02 of the Code of Criminal Procedure, which makes confidential information revealing the substance of grand jury deliberations, merely because the information was presented to the grand jury. Information gathered by a district attorney independently of any request or direction of the grand jury, even where that information was subsequently submitted to the grand jury, may not be withheld from the public under the judicial exception found at section 552.003(b) or under the confidentiality provision found at article 20.02 of the Code of Criminal Procedure. Open Records Decision No. 513 (1988).

In this instance, you have not argued or otherwise demonstrated that your office has either collected or maintained the contents of Exhibit B at the request or direction of the grand jury.¹ We therefore conclude that there is no basis for withholding the requested records on these grounds.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code² because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the district attorney has adopted that would permit access to the requested records. Because the information at issue pertains to an investigation of sexual assault of a child, this office concludes that the district attorney must withhold the requested records in their entirety pursuant to section 261.201 of the Family Code.

¹The fact that you have distinguished your "Exhibit F" as being records obtained pursuant to grand jury subpoena suggests to this office that the records found in Exhibit B were not in fact obtained by the district attorney at the behest of the grand jury.

²Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 112771

Enclosures: Submitted documents

cc: Ms. Bettina J. Richardson
Rusty Hardin & Associates, P.C.
1201 Louisiana, Suite 3300
Houston, Texas 77002-5609
(w/o enclosures)